

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2003-000048-001 DT

03/03/2004

sentencing, the Appellant admitted of his prior DUI conviction; however, the court neglected to follow the procedures outlined in Rule 17.6, Arizona Rules of Criminal Procedure, and neither counsel brought this issue to the court's attention in a timely fashion.

Both parties are in agreement that the record in this case at the time of sentencing is deficient in that the trial judge did not advise Appellant regarding the nature of the allegation of the prior DUI conviction, the effect that the prior conviction would have upon the Appellant's sentence, and the Appellant's right to require Appellee to proceed to trial, and finally, the right of the Appellant to be represented by counsel at a trial on the prior conviction.

Appellant correctly cites State v. Stuart¹ as the controlling authority in cases such as this. Stuart requires that this court remand the matter back to the trial court for an evidentiary hearing to determine whether the Appellant was aware of the range of sentence that could result from his admission a prior DUI conviction, his right to proceed to trial on the issue of a prior conviction, and his right to be represented by appointed counsel at the prior trial. If the trial judge determines that the Appellant did not know any of this information, the trial judge shall allow the Appellant to withdraw his admission of a prior DUI conviction and shall set the prior conviction issue for a trial.

IT IS ORDERED remanding this matter back to the Phoenix City Court for an evidentiary hearing consistent with this opinion.

/s/ HONORABLE MICHAEL D. JONES

JUDICIAL OFFICER OF THE SUPERIOR COURT

¹ 168 Ariz. 83, 811 P.2d 335 (App. 1990).
Docket Code 512